IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 231 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORBHAI V VALA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1,
MS MAITHILI MEHTA, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order directing the respondents to appoint him on the compassionate ground on Class IV post by quashing and setting aside the impugned order passed by the respondent State dated 5-11-1996.

2. The petitioner was appointed as a clerk (Class III post) on compassionate ground on the death of his father. Services of the petitioner came to be terminated on the ground that the petitioner has not cleared/passed the Pre Service Training Examination within stipulated chances. Petitioner preferred Special Civil Application No.1904 of 1994, which came up for hearing before this Court (Coram: R.K. Abichandani, J.) and it was submitted on behalf of the petitioner that he is prepared even to work as a Class IV employee without claiming any right in the Class III cadre in which he has already worked and that he will make representation to the State Government for a fresh appointment in Class IV cadre and this Court disposed off the aforesaid Special Civil Application directing the concerned authority to consider the representation/ application sympathetically having regard the fact that he was initially appointed on compassionate ground, and take appropriate decision in accordance with law within two weeks after the application is received. By impugned communication dated 5th November 1996, the State Government, Panchayat and Rural Housing Development Department, State of Gujarat, communicated to the DDO, Amreli that there is no provision to give appointment in

Class IV on being failed in Pre Service Training Examination by the employee which was appointed on compassionate ground and therefore, petitioner cannot be appointed on Class IV. Being aggrieved by the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri CB Dastoor, learned advocate appearing on behalf of the petitioner has relied upon one decision of this Court dated 9th March 2004 passed in Special Civil Application No.2875 of 1995, whereby the learned Single Judge while relying upon another decision in the case of Kokilaben Harshadrai Pancholi v/s. Development Commissioner reported in 1998(2) GCD 1058 (Gujarat) as in an identical fact situation, has allowed the said Special Civil Application and has directed to reinstate the petitioner of her original post with continuity of service and all other consequential benefits, except the payment of back wages. It is required to be noted that this petition was ordered to be heard along with Special Civil Application No.2875 of 1995 referred to hereinabove. However, for some reason, it was not tagged with the present Special Civil Application and the same

came to be disposed off by the learned Single Judge by judgment and order dated 9th March 1994. On going through the facts of the said case, the facts of the present case are identical to the facts of Special Civil Application No.2875 of 1995. This Court has held that if appointment is made on compassionate ground, the same cannot be conditional one and/or once compassionate appointment is given, it cannot be taken away at a later point of time under the pretext of non-fulfilling certain service condition.

4. Under the circumstances, as such the order by which the petitioner was dismissed from service as a Class III employee, is required to be quashed and set aside considering the judgment and order passed by this Court rendered in aforesaid Special Civil Application No.2875 of 1995. However, considering the fact that the petitioner had challenged the order by which the petitioner was dismissed as a Class III and he submitted in the aforesaid Special Civil Application No.2875 of 1995 that he is ready to work in Class IV post, the respondents are directed to appoint the petitioner on any Class IV post. Shri Dastoor, learned advocate has submitted that the petitioner is ready and willing to

accept the appointment afresh without claiming any other benefits. It is required to be noted that apart from the above facts, when the learned Single Judge directed the concerned authority to consider the application of the petitioner sympathetically and considering the fact that the petitioner was appointed on compassionate ground, the respondent authority ought to have considered the application in its true spirit and ought to have considered the order passed by this Court in true spirit. However, the application of the petitioner has been rejected on the ground that there is no such provision.

5. For the reasons stated above, the petition succeeds. The respondents are directed to appoint the petitioner on any Class IV post within a period of four weeks from the date of receipt of this order and the said appointment would be as a fresh employee, meaning thereby the petitioner will not be entitled to other consequential benefits. The impugned communication dated 5th November 1996 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Ad interim relief if any, stands vacated. No costs. DS permitted.

(M.R.SHAH,J.)

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